IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Allah Bux. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 961/2004 against the order dated 14-11-2003 passed by the Sessions Judge, Balotra,in Criminal Revision No. 16/2003.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Rameshwar Hedau, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 14.11.2003 passed by the Sessions Judge, Balotra (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 16/2003, whereby the revision petition filed by the petitioner against the order dated 6-1-2003 passed by the Judicial Magistrate, Balotra (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioner and

the Public Prosecutor for the State. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

It is contended by the learned counsel for the petitioner that the petitioner filed a report before the police but the police did not register a crime case and, therefore, the petitioner filed the complaint before the trial Court. The trial Court recorded the statements of the petitioner and his witnesses under Sections 200 and 202 of the Code and the matter was posted for arguments for taking cognizance. It appears from the order of the trial Court that on several occasions, the matter was adjourned at the request of the complainant for argument on taking cognizance. However, subsequently, the matter was sent to the police for inquiry under Section 202 of the Code. After receipt of the inquiry report and hearing the counsel for the complainant, the trial Court came to the conclusion that for the very occurrence, the petitioner who is a trespasser on the Government land, lodged a report against Ashok Arora, the Tehsildar being FIR No. 19/2000 for the offence under Section 436 IPC. After thorough investigation, the police submitted the negative final report and that report has been accepted. The trial Court also considered various aspects of the case, the material placed before it and finding serious contradictions in the statement of the complainant and his witnesses, as also the photographs filed by the petitioner on

record. The case set up by the complainant, looking to the subsequent improvements in the statements of the witnesses was not found to be true occurrence. The trial Court also observed that for the very occurrence, the petitioner-complainant had lodged a crime report being FIR No. 19/2000 against Ashok Arora, the Tehsildar, who, in exercise of the power, removed the encroachment made by the petitioner on the Government land. Considering the material on record, the trial Court came to the conclusion that there is no ground to proceed against the non-petitioners No.2 to 4 and consequently dismissed the complaint. That order came to be challenged by the petitioner before the Revisional Court. The Revisional Court, on consideration of the facts on record, did not find any error in the order of the trial Court and dismissed the revision petition.

Learned counsel for the petitioner has relied on a decision of the Karnataka High Court in Nagawwa Vs. Veeranna Shivalingappa Koujalagi & ors., 1975 Cri.L.J. 1367, wherein it was held that taking cognizance of an offence or offences on complain is a condition precedent to examining at once the complainant and the witnesses, if any, present on that day. It was further held that after taking cognizance of an offence on complaint, the courses open to the Magistrate are, at once, to examine the complainant and the witnesses present, even if the words “at once” are given a liberal interpretation and then, if

need be, if the Court entertains any doubt on certain matters about the involvement of some of the alleged accused, to call for a report from a police officer. The Magistrate is prohibited from directly having recourse to Section 202, Criminal Procedure Code. The judgment relied on by the learned counsel for the petitioner turns on its own facts and is of no help to the facts and circumstances of the instant case. In the instant case, the statements of the complainant and his witnesses were recorded and thereafter it was brought to the notice of the Court that for the very offence, a report was lodged by the complainant-petitioner against Ashok Arora, the then Tehsildar and on that a report of the police was called and it is not the case that the complaint was dismissed on that police report, but on careful appreciation of the statements of the witnesses, the trial Court came to the conclusion that there is no ground to proceed against the non-petitioners No. 2 to 4 and accordingly dismissed the complaint. In the circumstances, therefore, it cannot be said that the orders impugned would result in serious miscarriage of justice or abuse of the process of the Court.

More so, the petitioner has already availed one revision and in the garb of the instant criminal miscellaneous petition under Section 482 of the Code, the petitioner seeks second revision. It is settled law that the power under Section 482 of the Code are to be exercised very sparingly and

cautiously. The instant is not a case warranting any interference in the inherent powers.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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